



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-3659 (For: Rep. Born)

has been copied/added to the drafting file for

2013 LRB-3993 (For: Rep. Born)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 01/16/2014 (Per: ARG)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2013 DRAFTING REQUEST

Bill

Received: **11/18/2013** Received By: **agary**
Wanted: **As time permits** Same as LRB:
For: **Mark Born (608) 266-2540** By/Representing: **John Cronin**
May Contact: Drafter: **agary**
Subject: **Fin. Inst. - WCA** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Born@legis.wisconsin.gov**
Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Pleadings in consumer act cases

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 12/10/2013			_____			
/P1	agary 1/6/2014	jdyer 12/11/2013	rschluct 12/11/2013	_____	lparisi 12/11/2013		
/P2	agary 1/13/2014	jdyer 1/6/2014	rschluct 1/6/2014	_____	mbarman 1/6/2014		
/P3		jdyer	rschluct	_____	srose		

LRB-3659

1/14/2014 10:37:22 AM

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		1/14/2014	1/14/2014	_____	1/14/2014		

FE Sent For:

<END>

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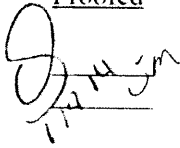
Topic:

Pleadings in consumer act cases

Instructions:

See attached

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/?	agary 12/10/2013	P3/14 jld	jd				
/P1	agary 1/6/2014	jdyer 12/11/2013	rschluct 12/11/2013	_____	lparisi 12/11/2013		
/P2		jdyer 1/6/2014	rschluct 1/6/2014	_____	mbarman 1/6/2014		

LRB-3659

1/6/2014 4:00:21 PM

Page 2

FE Sent For:

<END>

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/?	agary 12/10/2013	P2 1/6 jld jd		==			
/P1		jdyer 12/11/2013	rschluet 12/11/2013	==	lparisi 12/11/2013		

FE Sent For:

<END> 16/14 5M

2013 DRAFTING REQUEST

Bill

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For:	Mark Born (608) 266-2540	By/Representing:	John Cronin
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Subject:	Fin. Inst. - WCA	Addl. Drafters:	
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Submit via email: YES
 Requester's email: Rep.Born@legis.wisconsin.gov
 Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

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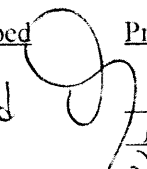
Topic:

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Instructions:

See attached

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/?	agary	PI 12 11 jld	jd				

FE Sent For:

<END>

Gary, Aaron

From: Cronin, John
Sent: Monday, November 18, 2013 10:04 AM
To: Gary, Aaron
Subject: Drafting requests
Attachments: 425.109 fix.pdf; 425.105 fix.pdf

Hi Aaron,

On behalf of Rep. Born, I need you to draft two bills to amend Chapter 425. Please do them as P-Drafts to start.

Bill #1 would amend 425.109 relating to pleading requirements. Please have the bill draft reflect the changes shown in the first attachment.

~~Bill #2 would amend 425.105. Please have the bill draft reflect the changes shown in the second attachment.~~

John Cronin
Office of Rep. Mark Born
39th Assembly District

2003 yrs ago

425.109 Pleadings.

(1) A complaint by a merchant creditor to enforce any cause of action arising from a consumer credit transaction shall include all of the following:

(a) An identification of the consumer credit transaction.

(b) A description of the collateral or leased goods, if any, which the merchant creditor seeks to recover or has recovered.

(c) A specification of the facts constituting the alleged default by the customer.

(d) The actual or estimated amount of U.S. dollars or of a named foreign currency due on a date certain after default as reflected on a billing statement issued by the creditor and addressed to the customer, and a breakdown of all charges, interest and payments, including any amount received from the sale of any collateral, occurring after such date certain. This paragraph shall not be deemed to require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges, the total of all interest, and the total of all payments occurring after such date certain. ~~that the creditor alleges he or she is entitled to recover and the figures necessary for computation of the amount, including any amount received from the sale of any collateral.~~

(e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated amount of U.S. dollars or of a named foreign currency required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).

(f) Except in an action to recover goods subject to a consumer lease, the estimated amount of U.S. dollars or of a named foreign currency of any deficiency claim which may be available to the merchant creditor following the disposition of any collateral recovered subject to the limitations of s. 425.209 or which the merchant creditor seeks to recover and which the creditor intends to assert subject to the limitations of s. 425.210 if the customer fails to redeem the collateral.

(g) If the customer still has the right to cure a default under s. 425.105 pursuant to a notice given under s. 425.104, the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made.

(h) An accurate copy of the writings, if any, evidencing the transaction, except that with respect to claims arising under open-end credit plans, a statement that the merchant creditor will submit accurate copies of the writings evidencing the customer's obligation to the court and the customer upon receipt of the customer's written request therefor on or before the return date or the date on which the customer's answer is due.

(2) Upon the written request of the customer pursuant to (1)(h), the merchant creditor shall submit accurate copies to the court and the customer of writings evidencing the customer's obligation ~~any transaction pursuant to an open-end credit plan upon which the merchant's creditor's claim is made and default judgment may not be entered for the merchant creditor unless the merchant creditor does so.~~ The writings requirement is satisfied if the merchant provides the customer with a copy of the last billing statement that was issued by the creditor and addressed to the customer reflecting the charge-off balance on the account. If that billing statement is attached to the complaint, then the statement set forth in (1)(h) does not have to be included in the complaint.

(3) A default judgment may not be entered upon a complaint which fails to comply with this section. A complaint that fails to comply with this section does not constitute a violation of chs. 421 to 427, and shall not give rise to recovery of attorney fees pursuant to s. 425.308, unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

Gary, Aaron

From: Cronin, John
Sent: Tuesday, December 03, 2013 5:10 PM
To: Gary, Aaron
Subject: RE: Drafting requests
Attachments: 425.109 Amendment Position Statement.pdf; 425.105 Amendment Position Statement.pdf

Hi Aaron,

I have attached two documents that provide the rationale behind the changes to 425.105 and 425.109.

The purpose of the change to 425.105 is to avoid a conflict with the National Banking Act and ensure we are remaining consistent with applicable federal regulations. The purpose of the 425.109 change is to provide more clarity in lawsuits aimed at collecting consumer credit debt.

Thanks again for your help on this. Email me back if you have additional questions.

John Cronin
Office of Rep. Mark Born
39th Assembly District

From: Gary, Aaron
Sent: Tuesday, December 03, 2013 4:04 PM
To: Cronin, John
Subject: RE: Drafting requests

Hi John,

I am working on the change to s. 425.105. There are a number of other statutory provisions that may be relevant here (see, e.g., s. 425.103 (1)), but it is hard for me to know without knowing exactly what your intent is in making this change. Can you tell me what the intent is for this bill? On its face, the language suggests that a credit card issuer may accelerate the maturity date and/or bring an action regardless of whether the customer/card holder is in default or has had an opportunity to cure. Can you please describe for me what you intend the effect of this bill to be?

I have a similar question regarding the changes to s. 425.109. What is the intent in changing "creditor" to "merchant" in this provision? The two terms seem to be used interchangeably in ch. 425 and each definition uses the other term. See s. 421.301 (16) and (25). So I am trying to figure out what substantive effect this is intended to have. Can you shed any light on that?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Cronin, John
Sent: Monday, November 18, 2013 10:04 AM
To: Gary, Aaron
Subject: Drafting requests

Position Statement on Proposed Statutory Amendment to Wisconsin Statute Section 425.109

Purpose of proposed amendment: The purpose of the amendment is to clarify and insure compliance with the special pleading requirements in lawsuits filed to collect consumer credit debt, and to clarify the result of a non-compliant complaint.

History: Section 425.109 of the Wisconsin Consumer Act (WCA) is a special pleading statute that requires more information in a Complaint than the information required in the General Rules of Pleading under Wis. Stat. 802.01. The general rules of pleading only require "A *short plain statement of the claim.*"

The original purpose of § 425.109 when the WCA was enacted in the early 1970's was to provide sufficient information at the pleading stage (when the complaint was filed) for the customer and the court to determine if the debt was in fact a debt of the customer (the transaction must be identified), whether the debt was in default (the reason for default must be specified) and the amount of the debt. The proposed amendment provides such information.

The original theory under the WCA was that a customer should have adequate information to verify the debt and the amount of the debt without having to go to a lawyer and demand such basic information through the court process. The amendment clarifies and confirms that original purpose by giving the customer the necessary information.

The current language of the statute is ambiguous and unclear: The current wording of Wis. Stat. § 425.109 says that a complaint filed in a consumer credit collection lawsuit must state:

"The actual or estimated amount of U.S. dollars or of a named foreign currency that the creditor alleges he or she is entitled to recover and the figures necessary for computation of the amount, including any amount received from the sale of any collateral."

The problem with that language is twofold: First, it fails to indicate in any manner what "figures" a debtor would need to determine the balance due. Second, because that language is ambiguous and unclear, judges, creditors and debtors waste countless, unnecessary time and resources arguing and litigating on a case-by-case basis what "figures" are necessary to comply with the statute. As a result, various circuit courts currently apply different standards, ranging from requiring only an allegation of the total amount due on the debt, to the other extreme of attaching to the complaint copies of every single monthly account statement (which discloses in a public record every purchase made by the debtor which are the subject of the lawsuit, much to the dismay of the vast majority of debtors who don't contest the balance claimed due in the complaint).

single monthly account statement (which discloses in a public record every purchase made by the debtor which are the subject of the lawsuit, much to the dismay of the vast majority of debtors who don't contest the balance claimed due in the complaint).

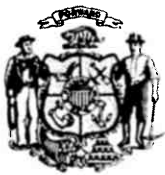
Benefit of proposed amendment: This amendment would clarify and give guidance to courts, creditors and debtors as to what information must be contained in a complaint to collect a consumer debt.

Specifically, the proposed amendment requires a complaint to supply the customer with the account balance on a statement previously sent to the customer, so the information on the complaint will conform to information the customer has already seen. The amendment then requires a listing of all activity following such date of the statement identified in the complaint.

It is also critical to keep in mind that this proposed amendment only governs what is required to be disclosed in a complaint **at the initial pleading stage**. The amendment **does not affect the proof that is required at Trial**. Every creditor or assignee **must still prove at Trial the existence of the debt, the amount of the debt and the incident of default before a judge or jury**.

An additional benefit of the proposed amendment is clarification that a non-compliant complaint would bar the entry of a default judgment (currently worded as "a judgment . . . entered on a complaint") and that attorney fees would only be recoverable by a debtor if such non-compliance was wilful or intentional.

Finally, as noted above, by adding language to the statute that expressly includes its application to assignees of consumer credit debt, the proposed amendment eliminates any concern that assignees have a lesser pleading burden than original creditors.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3659/P1

ARG:.....

12/10
revised by 12/17 AM jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓ Gen

1 AN ACT ...; relating to: pleading requirements under the Wisconsin Consumer
2 Act. ✓

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000[✓] or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA).[✓] A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed.[✓] A merchant is defined to include, among others, a creditor or a seller of property on credit and expressly includes such a creditor's or seller's assignee or successor.[✓] A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes.[✓] A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons.[✓] A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan (usually involving use of a credit card).[✓]

Under current law, the WCA[✓] includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction, including pleading requirements for a complaint filed by a creditor to enforce these rights. Among the information that must be included in such a complaint, the creditor must: identify the consumer credit transaction;[✓] describe any collateral sought to be

recovered; specify the facts constituting the customer's alleged default; identify the actual or estimated amount of money that the creditor is entitled to recover and the figures necessary for computation of this amount; and include an accurate copy of the writings evidencing the transaction except that, for a claim arising under an open-end credit plan, the creditor may substitute a statement that the creditor will, upon request, provide copies of the writings evidencing the customer's obligation. A judgment may not be entered on a complaint that fails to comply with these pleading requirements. For a claim arising under an open-end credit plan, on written request by the customer, the creditor must submit accurate copies to the customer and the court of writings evidencing any transaction on which the claim is made and judgment may not be entered for the creditor unless the creditor does so.

This bill modifies the pleading requirements in WCA cases. First, under the bill, these pleading requirements apply to a merchant, rather than a creditor. As defined under current law, a merchant expressly includes an assignee of or successor to a creditor or seller on credit. Second, the bill changes the manner in which a merchant is required to plead the amount owed by the customer. Under the bill, the merchant must identify the actual or estimated amount of money alleged to be due to the merchant on a date certain after the customer's default, as reflected in a billing statement issued by the merchant and addressed to the customer, and include a breakdown of all charges, interest, and payments occurring after this date certain. Third, the bill specifies that, for a claim arising under an open-end credit plan ~~where~~ ^{in which} the merchant has not attached to the complaint copies of the writings evidencing the customer's obligation and the customer has requested these copies, the merchant's obligation to provide these copies is satisfied if the merchant provides the customer and court with a copy of the last billing statement that was issued by the merchant and addressed to the customer reflecting the total outstanding balance on the customer's account. The merchant may also satisfy its obligation by attaching copies of this billing statement to the complaint. Fourth, under the bill, the merchant's failure to comply with these requirements related to pleading and providing copies precludes entry of default judgment, rather than judgment, for the merchant. Fifth, under the bill, a complaint that fails to comply with these pleading requirements is not a violation that gives rise to a penalty, civil liability, or an award of attorney fees under the WCA unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 425.109 (1) (intro.) ^X of the statutes is amended to read:
- 2 425.109 (1) (intro.) A complaint by a creditor merchant to enforce any cause of
- 3 action arising from a consumer credit transaction shall include all of the following:

1 **SECTION 2.** 425.109 (1) (b) of the statutes is amended to read:

2 425.109 (1) (b) A description of the collateral or leased goods, if any, which the
3 ~~creditor~~ merchant seeks to recover or has recovered.

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

4 **SECTION 3.** 425.109 (1) (d) of the statutes is amended to read:

5 425.109 (1) (d) The actual or estimated amount of U.S. dollars or of a named
6 foreign currency ~~that the creditor alleges he or she is entitled to recover and the~~
7 ~~figures necessary for computation of the amount, including any amount received~~
8 ~~from the sale of any collateral alleged to be due to the merchant on a date certain after~~
9 ~~the customer's default, as reflected on a billing statement issued by the merchant~~
10 ~~and addressed to the customer, and a breakdown of all charges, interest, and~~
11 ~~payments, including any amount received from the sale of any collateral, occurring~~
12 ~~after this date certain. This paragraph does not require a specific itemization, but~~
13 ~~the breakdown shall identify separately the amount due on a date certain, the total~~
14 ~~of all charges occurring after this date certain, the total of all interest occurring after~~
15 ~~this date certain, and the total of all payments occurring after this date certain.~~

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

16 **SECTION 4.** 425.109 (1) (f) of the statutes is amended to read:

17 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,
18 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency
19 claim which may be available to the ~~creditor~~ merchant following the disposition of
20 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~
21 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject
22 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

23 **SECTION 5.** 425.109 (1) (h) of the statutes is amended to read:

1 425.109 (1) (h) ~~An~~ Subject to sub. (2),[✓] an accurate copy of the writings, if any,
2 evidencing the transaction, except that with respect to claims arising under
3 open-end credit plans, a statement that the ~~creditor~~[✓] merchant will submit accurate
4 copies of the writings evidencing the customer's obligation to the court and the
5 customer upon receipt of the customer's written request therefor on or before the
6 return date or the date on which the customer's answer is due.

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

7 [✓]
8 **SECTION 6.** 425.109 (2) of the statutes is amended to read:

9 425.109 (2) Upon the written request of the customer under sub. (1) (h), the
10 ~~creditor~~ merchant[✓] shall submit accurate copies to the court and the customer of
11 writings evidencing ~~any transaction~~ the customer's obligation pursuant to an
12 open-end credit plan upon which the ~~creditor's~~ merchant's[✓] claim is made and default
13 judgment may not be entered for the ~~creditor~~ merchant unless the ~~creditor~~ merchant
14 does so.[✓] The writings requirement under this subsection is satisfied if the merchant
15 provides the customer with a copy of the last billing statement that was issued by the
16 merchant and addressed to the customer reflecting the total outstanding balance on
17 the customer's account. If this billing statement is attached to the complaint, then
18 the statement under sub. (1) (h) is not required to be included in the complaint.[✓]

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

18 [✓]
19 **SECTION 7.** 425.109 (3) of the statutes is amended to read:

20 425.109 (3) A default judgment may not be entered upon a complaint which
21 fails to comply with this section.

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

22 [✓]
23 **SECTION 8.** 425.109 (4) of the statutes is created to read:

24 425.109 (4) For purposes of subchs. III and IV of this chapter[✓] a complaint that
25 fails to comply with this[✓] section does not constitute a violation of chs. 421 to 427,[✓] and
26 shall not give rise to recovery of attorney fees under s. 425.308,[✓] unless the customer

1 establishes by a preponderance of the evidence that the failure to comply was willful
2 or intentional.✓

3 **SECTION 9. Initial applicability.**

4 (1) This act first applies to complaints filed on the effective date of this
5 subsection.✓

6 **SECTION 10. Effective date.**

7 (1) This act takes effect on the first day of the 4th month beginning after
8 publication.✓

9 (END)

Gary, Aaron

From: Cronin, John
Sent: Wednesday, December 11, 2013 2:45 PM
To: Gary, Aaron
Subject: RE: Drafting requests

Hi Aaron,

We are all set for 3:00PM on Wednesday, December 18th. The meeting will be in Rep. Born's office – 312 North.

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District

From: Gary, Aaron
Sent: Tuesday, December 10, 2013 2:50 PM
To: Cronin, John
Subject: RE: Drafting requests

Hi John,

I am available at 3:00 pm on Wed. 12/18. I should note that the other draft (LRB-3659) is in editing and you should have it before that date. If that draft will also need changes, it might be easiest to try to do them both at the same time.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Cronin, John
Sent: Tuesday, December 10, 2013 11:51 AM
To: Gary, Aaron
Subject: RE: Drafting requests

Hi Aaron,

Would you be able to come over next week and meet with Rep. Born and some stakeholders to discuss changes to 3660/P1? 3:00PM on Wednesday, December 18th would be optimal but the 19th is also open if that would be better. Let me know what works best for you.

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District

Gary, Aaron

From: Cronin, John
Sent: Friday, December 20, 2013 9:21 AM
To: Gary, Aaron
Subject: 425.109 and 425.105 proposed changes

Hi Aaron,

Thanks again for taking the time to meet with us on Wednesday. I have received the updated language based on what we discussed and it is included below. The proposed changes are underlined. Let me know if you have additional questions or if anything needs to be clarified. Merry Christmas!

John Cronin
Office of Rep. Mark Born
39th Assembly District

425.109 -

As requested, we came up with the following definition for "billing statement."

That being: "a statement issued pursuant to 15 U.S.C. 1637."

This will require two changes to the draft. The phrase "issued by the merchant and" should be removed from lines 11-12 in section 3 and from lines 14-15 under section 6.

Further, we all agreed to add "at the time it was issued" in two places. The first being on page two of the analysis in the second paragraph after "on the customer's account." Also, in the statute in Section 6, line 16.

425.105 -

Add back in the portion of Section 1 that was stricken on line 4, and strike lines 6-10 on page two - as was discussed at the meeting. The last word in line 10, and lines 11 and 12 on page two would stay - which was also discussed. Below is our reasoning.

I think we were all on the same page at the meeting that the National Banking Act (NBA) allows national banks to establish when there can be an acceleration of the balance with regard to a credit card account issued by a national bank- and that pre-empts the state law right to cure requirement with regard to national banks. Therefore, national banks should not be required to send a right to cure before accelerating a credit card debt.



State of Wisconsin
2013 - 2014 LEGISLATURE

DN

needed
by 1/9

in
1/6



LRB-3659/P1 P2
ARG:jld:rs

PHR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X Regen

- 1 AN ACT *to amend* 425.109 (1) (intro.), 425.109 (1) (b), 425.109 (1) (d), 425.109 (1)
- 2 (f), 425.109 (1) (h), 425.109 (2) and 425.109 (3); and *to create* 425.109 (4) of the
- 3 statutes; **relating to:** pleading requirements under the Wisconsin Consumer
- 4 Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit and expressly includes such a creditor's or seller's assignee or successor. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan (usually involving use of a credit card).

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction, including

pleading requirements for a complaint filed by a creditor to enforce these rights. Among the information that must be included in such a complaint, the creditor must: identify the consumer credit transaction; describe any collateral sought to be recovered; specify the facts constituting the customer's alleged default; identify the actual or estimated amount of money that the creditor is entitled to recover and the figures necessary for computation of this amount; and include an accurate copy of the writings evidencing the transaction except that, for a claim arising under an open-end credit plan, the creditor may substitute a statement that the creditor will, upon request, provide copies of the writings evidencing the customer's obligation. A judgment may not be entered on a complaint that fails to comply with these pleading requirements. For a claim arising under an open-end credit plan, on written request by the customer, the creditor must submit accurate copies to the customer and the court of writings evidencing any transaction on which the claim is made and judgment may not be entered for the creditor unless the creditor does so.

This bill modifies the pleading requirements in WCA cases. First, under the bill, these pleading requirements apply to a merchant, rather than a creditor. As defined under current law, a merchant expressly includes an assignee of or successor to a creditor or seller on credit. Second, the bill changes the manner in which a merchant is required to plead the amount owed by the customer. Under the bill, the merchant must identify the actual or estimated amount of money alleged to be due to the merchant on a date certain after the customer's default, as reflected in a billing statement ~~issued by the merchant and~~ addressed to the customer, and include a breakdown of all charges, interest, and payments occurring after this date certain. Third, the bill specifies that, for a claim arising under an open-end credit plan in which the merchant has not attached to the complaint copies of the writings evidencing the customer's obligation and the customer has requested these copies, the merchant's obligation to provide these copies is satisfied if the merchant provides the customer and court with a copy of the last billing statement ~~that was issued by the merchant and~~ addressed to the customer reflecting the total outstanding balance on the customer's account. The merchant may also satisfy its obligation by attaching copies of this billing statement to the complaint. Fourth, under the bill, the merchant's failure to comply with these requirements related to pleading and providing copies precludes entry of default judgment, rather than judgment, for the merchant. Fifth, under the bill, a complaint that fails to comply with these pleading requirements is not a violation that gives rise to a penalty, civil liability, or an award of attorney fees under the WCA unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

✓ *The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1

SECTION 1. 425.109 (1) (intro.) of the statutes is amended to read:

1 425.109 (1) (intro.) A complaint by a ~~creditor~~ merchant to enforce any cause of
2 action arising from a consumer credit transaction shall include all of the following:

3 **SECTION 2.** 425.109 (1) (b) of the statutes is amended to read:

4 425.109 (1) (b) A description of the collateral or leased goods, if any, which the
5 ~~creditor~~ merchant seeks to recover or has recovered.

6 **SECTION 3.** 425.109 (1) (d) of the statutes is amended to read:

7 425.109 (1) (d) The actual or estimated amount of U.S. dollars or of a named
8 foreign currency ~~that the creditor alleges he or she is entitled to recover and the~~
9 ~~figures necessary for computation of the amount, including any amount received~~
10 ~~from the sale of any collateral alleged to be due to the merchant on a date certain after~~
11 ~~the customer's default, as reflected on a billing statement~~ issued by the merchant
12 and addressed to the customer, and a breakdown of all charges, interest, and
13 payments, including any amount received from the sale of any collateral, occurring
14 after this date certain. This paragraph does not require a specific itemization, but
15 the breakdown shall identify separately the amount due on a date certain, the total
16 of all charges occurring after this date certain, the total of all interest occurring after
17 this date certain, and the total of all payments occurring after this date certain.

18 **SECTION 4.** 425.109 (1) (f) of the statutes is amended to read:

19 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,
20 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency
21 claim which may be available to the ~~creditor~~ merchant following the disposition of
22 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~
23 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject
24 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

25 **SECTION 5.** 425.109 (1) (h) of the statutes is amended to read:

1 425.109 (1) (h) ~~An~~ Subject to sub. (2), an accurate copy of the writings, if any,
2 evidencing the transaction, except that with respect to claims arising under
3 open-end credit plans, a statement that the ~~creditor~~ merchant will submit accurate
4 copies of the writings evidencing the customer's obligation to the court and the
5 customer upon receipt of the customer's written request therefor on or before the
6 return date or the date on which the customer's answer is due.

7 **SECTION 6.** 425.109 (2) of the statutes is amended to read:

8 425.109 (2) Upon the written request of the customer under sub. (1) (h), the
9 ~~creditor~~ merchant shall submit accurate copies to the court and the customer of
10 writings evidencing ~~any transaction~~ the customer's obligation pursuant to an
11 open-end credit plan upon which the ~~creditor's~~ merchant's claim is made and default
12 judgment may not be entered for the ~~creditor~~ merchant unless the ~~creditor~~ merchant
13 does so. The writings requirement under this subsection is satisfied if the merchant
14 provides the customer with a copy of the last billing statement that was issued by the
15 merchant and addressed to the customer reflecting the total outstanding balance on
16 the customer's account. ^{Insert 7-76 ✓} If this billing statement is attached to the complaint, then
17 the statement under sub. (1) (h) is not required to be included in the complaint.

18 **SECTION 7.** 425.109 (3) of the statutes is amended to read:

19 425.109 (3) A default judgment may not be entered upon a complaint which
20 fails to comply with this section.

21 **SECTION 8.** 425.109 (4) of the statutes is created to read:

22 425.109 (4) For purposes of subchs. III and IV, a complaint that fails to comply
23 with this section does not constitute a violation of chs. 421 to 427, and shall not give
24 rise to recovery of attorney fees under s. 425.308, unless the customer establishes by
25 a preponderance of the evidence that the failure to comply was willful or intentional.

1 SECTION 9. Initial applicability.

2 (1) This act first applies to complaints filed on the effective date of this
3 subsection.

4 **SECTION 10. Effective date.**

(1) This act takes effect on the first day of the 4th month beginning after publication.

7 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3659/P2ins
ARG:.....

1

2

INSERT ANAL:

(no 4) at the time this billing statement was issued NO
4

3

4

INSERT 2-1:

5

SECTION 1. 425.1025^X of the statutes is created to read:

6

425.1025 **Definition.**[✓] In this subchapter,[✓] "billing statement" means a

7

statement issued pursuant to 15 USC 1637 (b).

8

9

INSERT 2-16:

10

(no 4) at the time this billing statement was issued NO
4

11

12

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3659/P2dn

ARG: A:...

date

JLd

Please review the attached draft carefully to ensure that it is consistent with your intent.

This draft includes the requested change of adding a definition of "billing statement" based on 15 USC 1637. Upon further review, I believe that this approach, as incorporated into this draft, is problematic. Section 425.109 sets forth pleading requirements applicable to all consumer credit transactions. Section 425.109 (1) (d) specifies how the amount of the obligation should be pleaded for all consumer credit transactions. Yet, 15 USC 1637 applies only to open-end consumer credit plans. The pleading standard in amended s. 425.109 (1) (d) will therefore not make sense for a creditor or merchant that has not extended open-end credit. I recommend that existing s. 425.109 (1) (d) be divided into two provisions, one of which would retain existing law for closed-end credit transactions and the other of which would create a new provision identical to amended s. 425.109 (1) (d) in the draft that is applicable to open-end credit transactions.

Section 425.205 applies to a creditor or merchant that brings an action to obtain possession of collateral. Section 425.205 (4) imposes requirements on the creditor or merchant to provide writings to the customer if the transaction is pursuant to an open-end credit plan. Do you want to amend s. 425.205 (4) to be similar to amended s. 425.109 (2) in the attached draft?

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3659/P2dn
ARG:jld:rs

January 6, 2014

Please review the attached draft carefully to ensure that it is consistent with your intent.

This draft includes the requested change of adding a definition of "billing statement" based on 15 USC 1637. Upon further review, I believe that this approach, as incorporated into this draft, is problematic. Section 425.109 sets forth pleading requirements applicable to all consumer credit transactions. Section 425.109 (1) (d) specifies how the amount of the obligation should be pleaded for all consumer credit transactions. Yet, 15 USC 1637 applies only to open-end consumer credit plans. The pleading standard in amended s. 425.109 (1) (d) will therefore not make sense for a creditor or merchant that has not extended open-end credit. I recommend that existing s. 425.109 (1) (d) be divided into two provisions, one of which would retain existing law for closed-end credit transactions and the other of which would create a new provision identical to amended s. 425.109 (1) (d) in the draft that is applicable to open-end credit transactions.

Section 425.205 applies to a creditor or merchant that brings an action to obtain possession of collateral. Section 425.205 (4) imposes requirements on the creditor or merchant to provide writings to the customer if the transaction is pursuant to an open-end credit plan. Do you want to amend s. 425.205 (4) to be similar to amended s. 425.109 (2) in the attached draft?

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Gary, Aaron

From: Cronin, John
Sent: Friday, January 10, 2014 9:24 AM
To: Gary, Aaron
Subject: LRB 3659/P2 & Drafter's Note

Hi Aaron,

Happy New Year and thank you again for your hard work on this.

Based on your drafter's note regarding the concerns for the first draft section, we have come up with some suggested changes.

We have no issue with dividing existing s.425.109 (1)(d) into two provisions as suggested, but rather than the second section (relating to close-ended accounts) keeping the language of 425.109 as it currently exists, change it to match the new language omitting the language: "...as reflected on a billing statement addressed to the customer, ...".

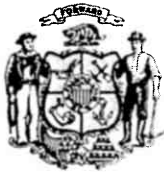
The justification for this would be that for close-ended accounts, there are no monthly billing statements that are mailed to the customer.

Also, per the drafter's note, you can go ahead with amending s.425.205(4) to incorporate the amended language in s.425.109(2) relating to an *accurate copy of writings evidencing any transactions*.

I received LRB 3660/P2 and the drafter's note yesterday and we are currently reviewing them. Due to the overlap in the analyses, it is still our intent to combine 3659 and 3660 into one bill once we have ironed out the details in each.

Regards,

John Cronin
Office of Rep. Mark Born
39th Assembly District



State of Wisconsin
2013 - 2014 LEGISLATURE

5000



LRB-3659/P2

P3

ARG:jld:rs

in 4/13

KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓ Regen

1 AN ACT *to amend* 425.109 (1) (intro.), 425.109 (1) (b), 425.109 (1) (d), 425.109 (1)
2 (f), 425.109 (1) (h), 425.109 (2) and 425.109 (3); and *to create* 425.1025 and
3 425.109 (4) of the statutes; **relating to:** pleading requirements under the
4 Wisconsin Consumer Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit and expressly includes such a creditor's or seller's assignee or successor. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan (usually involving use of a credit card).

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction, including

pleading requirements for a complaint filed by a creditor to enforce these rights. Among the information that must be included in such a complaint, the creditor must: identify the consumer credit transaction; describe any collateral sought to be recovered; specify the facts constituting the customer's alleged default; identify the actual or estimated amount of money that the creditor is entitled to recover and the figures necessary for computation of this amount; and include an accurate copy of the writings evidencing the transaction except that, for a claim arising under an open-end credit plan, the creditor may substitute a statement that the creditor will, upon request, provide copies of the writings evidencing the customer's obligation. A judgment may not be entered on a complaint that fails to comply with these pleading requirements. For a claim arising under an open-end credit plan, on written request by the customer, the creditor must submit accurate copies to the customer and the court of writings evidencing any transaction on which the claim is made and judgment may not be entered for the creditor unless the creditor does so.

This bill modifies the pleading requirements in WCA cases. First, under the bill, these pleading requirements apply to a merchant, rather than a creditor. As defined under current law, a merchant expressly includes an assignee of or successor to a creditor or seller on credit. Second, the bill changes the manner in which a merchant is required to plead the amount owed by the customer. Under the bill, the merchant must identify the actual or estimated amount of money alleged to be due to the merchant on a date certain after the customer's default, as reflected in a billing statement addressed to the customer, and include a breakdown of all charges, interest, and payments occurring after this date certain. Third, the bill specifies that, for a claim arising under an open-end credit plan in which the merchant has not attached to the complaint copies of the writings evidencing the customer's obligation and the customer has requested these copies, the merchant's obligation to provide these copies is satisfied if the merchant provides the customer and court with a copy of the last billing statement addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. The merchant may also satisfy its obligation by attaching copies of this billing statement to the complaint. Fourth, under the bill, the merchant's failure to comply with these requirements related to pleading and providing copies precludes entry of default judgment, rather than judgment, for the merchant. Fifth, under the bill, a complaint that fails to comply with these pleading requirements is not a violation that gives rise to a penalty, civil liability, or an award of attorney fees under the WCA unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

insert
AMH

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **425.1025 Definition.** In this subchapter, "billing statement" means a
2 statement issued pursuant to 15 USC 1637 (b).

3 **SECTION 2.** 425.109 (1) (intro.) [✓] of the statutes is amended to read:

4 425.109 (1) (intro.) A complaint by a ~~creditor~~ merchant to enforce any cause of
5 action arising from a consumer credit transaction shall include all of the following:

6 **SECTION 3.** 425.109 (1) (b) of the statutes is amended to read:

7 425.109 (1) (b) A description of the collateral or leased goods, if any, which the
8 ~~creditor~~ merchant seeks to recover or has recovered.

9 **SECTION 4.** 425.109 (1) (d) ~~of the statutes is amended to read:~~

10 425.109 (1) ~~(d)~~ The actual or estimated amount of U.S. dollars or of a named
11 foreign currency that the ~~creditor~~ alleges he or she is entitled to recover and the
12 figures necessary for computation of the amount, including any amount received
13 from the sale of any collateral alleged to be due to the merchant on a date certain after
14 the customer's default, as reflected on a billing statement addressed to the customer,
15 and a breakdown of all charges, interest, and payments, including any amount
16 received from the sale of any collateral, occurring after this date certain. This
17 paragraph does not require a specific itemization, but the breakdown shall identify
18 separately the amount due on a date certain, the total of all charges occurring after
19 this date certain, the total of all interest occurring after this date certain, and the
20 total of all payments occurring after this date certain.

21 **SECTION 5.** 425.109 (1) (f) of the statutes is amended to read:

22 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,
23 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency
24 claim which may be available to the ~~creditor~~ merchant following the disposition of
25 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~

1 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject
2 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

3 SECTION 6. 425.109 (1) (h) of the statutes is amended to read:

4 425.109 (1) (h) ~~An~~ Subject to sub. (2) and s. 425.205 (4) ~~an~~ accurate copy of the writings, if any,
5 evidencing the transaction, except that with respect to claims arising under
6 open-end credit plans, a statement that the ~~creditor~~ merchant will submit accurate
7 copies of the writings evidencing the customer's obligation to the court and the
8 customer upon receipt of the customer's written request therefor on or before the
9 return date or the date on which the customer's answer is due.

10 SECTION 7. 425.109 (2) ^y of the statutes is amended to read:

11 425.109 (2) Upon the written request of the customer under sub. (1) (h), the
12 ~~creditor~~ merchant shall submit accurate copies to the court and the customer of
13 writings evidencing ~~any transaction~~ the customer's obligation pursuant to an
14 open-end credit plan upon which the ~~creditor's~~ merchant's claim is made and default
15 judgment may not be entered for the ~~creditor~~ merchant unless the ~~creditor~~ merchant
16 does so. The writings requirement under this subsection is satisfied if the merchant
17 provides the customer with a copy of the last billing statement addressed to the
18 customer reflecting the total outstanding balance on the customer's account at the
19 time this billing statement was issued. If this billing statement is attached to the
20 complaint, then the statement under sub. (1) (h) is not required to be included in the
21 complaint.

22 SECTION 8. 425.109 (3) of the statutes is amended to read:

23 425.109 (3) A default judgment may not be entered upon a complaint which
24 fails to comply with this section.

25 SECTION 9. 425.109 (4) of the statutes is created to read:

425.109 (4) For purposes of subchs. III and IV, a complaint that fails to comply with this section does not constitute a violation of chs. 421 to 427, and shall not give rise to recovery of attorney fees under s. 425.308, unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

SECTION 10. Initial applicability.

(1) This act first applies to complaints filed on the effective date of this subsection.

SECTION 11. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.

(END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3659/P3ins
ARG:.....

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2

INSERT ANAL:

(no fl) If the claim arises under an open-end credit plan, the amount alleged to be due on a date certain must be reflected in a billing statement addressed to the customer.

NO
fl

3

4

INSERT 3-9:

5

SECTION 1. 425.109 (1) (d) of the statutes is renumbered 425.109 (1) (d) 1. and

6

amended to read:

7

425.109 (1) (d) 1. The If the consumer credit transaction is pursuant to an

8

open-end credit plan, the

9

10

INSERT 3-20:

11

SECTION 2. 425.109 (1) (d) 2. of the statutes is created to read:

12

425.109 (1) (d) 2. If the consumer credit transaction is other than one pursuant

13

to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a

14

named foreign currency alleged to be due to the merchant on a date certain after the

15

customer's default, and a breakdown of all charges, interest, and payments,

16

including any amount received from the sale of any collateral, occurring after this

17

date certain. This paragraph does not require a specific itemization, but the

18

breakdown shall identify separately the amount due on a date certain, the total of

19

all charges occurring after this date certain, the total of all interest occurring after

20

this date certain, and the total of all payments occurring after this date certain.

21

(end ins)

1

2

INSERT 5-4:

3

SECTION 3. 425.205 (4) [✓] of the statutes is amended to read:

4

425.205 (4) Upon the written request of the customer under s. 425.109 (2), [✓] the

5

merchant shall produce an accurate copy of writings evidencing ~~any transactions~~ the

6

customer's obligation pursuant to an open-end credit plan upon which the

7

merchant's claim is made, and default judgment shall not be entered for the

8

merchant ~~until~~ unless the merchant does so. The writings requirement under this

9

subsection is satisfied if the merchant provides the customer with a copy of the last

10

billing statement addressed to the customer reflecting the total outstanding balance

11

on the customer's account at the time this billing statement was issued. [✓] If this billing

12

statement is attached to the complaint, then the statement under s. 425.109 (1) (h)

13

is not required to be included in the complaint.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (16); 1981 c. 317; 1981 c. 391 s. 210; 1983 a. 389; 1989 a. 31; 1993 a. 246; 1997 a. 250; 2005 a. 255.

(end ins)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3659/P3
ARG:jld:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber and amend* 425.109 (1) (d); *to amend* 425.109 (1) (intro.),
2 425.109 (1) (b), 425.109 (1) (f), 425.109 (1) (h), 425.109 (2), 425.109 (3) and
3 425.205 (4); and *to create* 425.1025, 425.109 (1) (d) 2. and 425.109 (4) of the
4 statutes; **relating to:** pleading requirements under the Wisconsin Consumer
5 Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit and expressly includes such a creditor's or seller's assignee or successor. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan (usually involving use of a credit card).

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction, including pleading requirements for a complaint filed by a creditor to enforce these rights. Among the information that must be included in such a complaint, the creditor must: identify the consumer credit transaction; describe any collateral sought to be recovered; specify the facts constituting the customer's alleged default; identify the actual or estimated amount of money that the creditor is entitled to recover and the figures necessary for computation of this amount; and include an accurate copy of the writings evidencing the transaction except that, for a claim arising under an open-end credit plan, the creditor may substitute a statement that the creditor will, upon request, provide copies of the writings evidencing the customer's obligation. A judgment may not be entered on a complaint that fails to comply with these pleading requirements. For a claim arising under an open-end credit plan, on written request by the customer, the creditor must submit accurate copies to the customer and the court of writings evidencing any transaction on which the claim is made and judgment may not be entered for the creditor unless the creditor does so.

This bill modifies the pleading requirements in WCA cases. First, under the bill, these pleading requirements apply to a merchant, rather than a creditor. As defined under current law, a merchant expressly includes an assignee of or successor to a creditor or seller on credit. Second, the bill changes the manner in which a merchant is required to plead the amount owed by the customer. Under the bill, the merchant must identify the actual or estimated amount of money alleged to be due to the merchant on a date certain after the customer's default, and include a breakdown of all charges, interest, and payments occurring after this date certain. If the claim arises under an open-end credit plan, the amount alleged to be due on a date certain must be reflected in a billing statement addressed to the customer. Third, the bill specifies that, for a claim arising under an open-end credit plan in which the merchant has not attached to the complaint copies of the writings evidencing the customer's obligation and the customer has requested these copies, the merchant's obligation to provide these copies is satisfied if the merchant provides the customer and court with a copy of the last billing statement addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. The merchant may also satisfy its obligation by attaching copies of this billing statement to the complaint. Fourth, under the bill, the merchant's failure to comply with these requirements related to pleading and providing copies precludes entry of default judgment, rather than judgment, for the merchant. Fifth, under the bill, a complaint that fails to comply with these pleading requirements is not a violation that gives rise to a penalty, civil liability, or an award of attorney fees under the WCA unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 425.1025 of the statutes is created to read:

2 **425.1025 Definition.** In this subchapter, "billing statement" means a
3 statement issued pursuant to 15 USC 1637 (b).

4 **SECTION 2.** 425.109 (1) (intro.) of the statutes is amended to read:

5 425.109 (1) (intro.) A complaint by a ~~creditor~~ merchant to enforce any cause of
6 action arising from a consumer credit transaction shall include all of the following:

7 **SECTION 3.** 425.109 (1) (b) of the statutes is amended to read:

8 425.109 (1) (b) A description of the collateral or leased goods, if any, which the
9 ~~creditor~~ merchant seeks to recover or has recovered.

10 **SECTION 4.** 425.109 (1) (d) of the statutes is renumbered 425.109 (1) (d) 1. and
11 amended to read:

12 425.109 (1) (d) 1. ~~The~~ If the consumer credit transaction is pursuant to an
13 open-end credit plan, the actual or estimated amount of U.S. dollars or of a named
14 foreign currency ~~that the creditor alleges he or she is entitled to recover and the~~
15 ~~figures necessary for computation of the amount, including any amount received~~
16 ~~from the sale of any collateral~~ alleged to be due to the merchant on a date certain after
17 the customer's default, as reflected on a billing statement addressed to the customer,
18 and a breakdown of all charges, interest, and payments, including any amount
19 received from the sale of any collateral, occurring after this date certain. This
20 paragraph does not require a specific itemization, but the breakdown shall identify
21 separately the amount due on a date certain, the total of all charges occurring after
22 this date certain, the total of all interest occurring after this date certain, and the
23 total of all payments occurring after this date certain.

24 **SECTION 5.** 425.109 (1) (d) 2. of the statutes is created to read:

1 425.109 (1) (d) 2. If the consumer credit transaction is other than one pursuant
2 to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a
3 named foreign currency alleged to be due to the merchant on a date certain after the
4 customer's default, and a breakdown of all charges, interest, and payments,
5 including any amount received from the sale of any collateral, occurring after this
6 date certain. This paragraph does not require a specific itemization, but the
7 breakdown shall identify separately the amount due on a date certain, the total of
8 all charges occurring after this date certain, the total of all interest occurring after
9 this date certain, and the total of all payments occurring after this date certain.

10 **SECTION 6.** 425.109 (1) (f) of the statutes is amended to read:

11 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,
12 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency
13 claim which may be available to the ~~creditor~~ merchant following the disposition of
14 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~
15 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject
16 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

17 **SECTION 7.** 425.109 (1) (h) of the statutes is amended to read:

18 425.109 (1) (h) ~~An~~ Subject to sub. (2) and s. 425.205 (4), an accurate copy of the
19 writings, if any, evidencing the transaction, except that with respect to claims arising
20 under open-end credit plans, a statement that the ~~creditor~~ merchant will submit
21 accurate copies of the writings evidencing the customer's obligation to the court and
22 the customer upon receipt of the customer's written request therefor on or before the
23 return date or the date on which the customer's answer is due.

24 **SECTION 8.** 425.109 (2) of the statutes is amended to read:

1 425.109 (2) Upon the written request of the customer under sub. (1) (h), the
2 ~~creditor~~ merchant shall submit accurate copies to the court and the customer of
3 writings evidencing ~~any transaction~~ the customer's obligation pursuant to an
4 open-end credit plan upon which the ~~creditor's~~ merchant's claim is made and default
5 judgment may not be entered for the ~~creditor~~ merchant unless the ~~creditor~~ merchant
6 does so. The writings requirement under this subsection is satisfied if the merchant
7 provides the customer with a copy of the last billing statement addressed to the
8 customer reflecting the total outstanding balance on the customer's account at the
9 time this billing statement was issued. If this billing statement is attached to the
10 complaint, then the statement under sub. (1) (h) is not required to be included in the
11 complaint.

12 **SECTION 9.** 425.109 (3) of the statutes is amended to read:

13 425.109 (3) A default judgment may not be entered upon a complaint which
14 fails to comply with this section.

15 **SECTION 10.** 425.109 (4) of the statutes is created to read:

16 425.109 (4) For purposes of subchs. III and IV, a complaint that fails to comply
17 with this section does not constitute a violation of chs. 421 to 427, and shall not give
18 rise to recovery of attorney fees under s. 425.308, unless the customer establishes by
19 a preponderance of the evidence that the failure to comply was willful or intentional.

20 **SECTION 11.** 425.205 (4) of the statutes is amended to read:

21 425.205 (4) Upon the written request of the customer under s. 425.109 (2), the
22 merchant shall produce an accurate copy of writings evidencing ~~any transactions~~ the
23 customer's obligation pursuant to an open-end credit plan upon which the
24 merchant's claim is made, and default judgment shall not be entered for the
25 merchant ~~until~~ unless the merchant does so. The writings requirement under this

1 subsection is satisfied if the merchant provides the customer with a copy of the last
2 billing statement addressed to the customer reflecting the total outstanding balance
3 on the customer's account at the time this billing statement was issued. If this billing
4 statement is attached to the complaint, then the statement under s. 425.109 (1) (h)
5 is not required to be included in the complaint.

6 **SECTION 12. Initial applicability.**

7 (1) This act first applies to complaints filed on the effective date of this
8 subsection.

9 SECTION 13. Effective date.

10 (1) This act takes effect on the first day of the 4th month beginning after
11 publication.

12 (END)